

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

IN RE:

THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

IN RE:

THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO,

as representative of

EMPLOYEES RETIREMENT SYSTEM OF THE
GOVERNMENT OF THE COMMONWEALTH OF PUERTO
RICO,

Debtor.

PROMESA

Title III

No. 17 BK 3566-LTS

(Jointly Administered)

**SUPPLEMENTAL LIMITED RESPONSE AND JOINDER OF
THE BANK OF NEW YORK MELLON, AS FISCAL AGENT,
TO MOTION OF CERTAIN SECURED CREDITORS OF THE
EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT
OF THE COMMONWEALTH OF PUERTO RICO FOR
RELIEF FROM THE AUTOMATIC STAY**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747).

The Bank of New York Mellon (“BNYM” or the “Fiscal Agent”), as fiscal agent for the pension funding bonds issued by the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”), through its undersigned counsel, hereby renews its limited response and joinder [ECF No. 295] (the “Limited Response”) to the *Motion of Certain Secured Creditors of the Employees Retirement System of the Government of the Commonwealth of Puerto Rico for Relief from the Automatic Stay* [ECF No. 289] (the “2018 Motion”) and, in support hereof, respectfully represents as follows:²

BACKGROUND

1. BNYM serves as fiscal agent under the Pension Funding Bond Resolution (the “Resolution”), adopted by ERS on January 24, 2008, pursuant to which ERS issued three series of pension funding Bonds in the aggregate original principal amount of approximately \$2.9 billion.³

2. The Resolution requires ERS to “punctually pay or cause to be paid the principal of and premium, if any, on every Bond” and “to promptly collect and remit the Employers’ Contributions to the Fiscal Agent.” Resolution § 701; *see id.* §§ 704, 709 (requiring ERS to perform all acts required under the provisions of the Act and the Resolution).

3. ERS granted the Fiscal Agent, for the benefit of itself and all Bondowners, a security interest in and lien on the Pledged Property. Resolution § 501; *id.* Ex. B (defining “Pledged Property”).

4. On May 21, 2017, The Financial Oversight and Management Board for Puerto Rico filed a petition for relief on behalf of ERS under title III of the Puerto Rico Oversight, Management, and Economic Stability Act, 48 U.S.C. § 2101 *et seq.*

² All docket numbers cited herein refer to Case No. 17 BK 3566-LTS, unless otherwise specified.

³ Capitalized terms used but not defined herein have the meanings given in the Resolution.

5. On May 31, 2017, certain holders of beneficial interests in the Bonds filed a motion (the “2017 Motion”) seeking adequate protection or relief from the automatic stay. See ECF No. 26.

6. On June 19, 2017, the Fiscal Agent joined in the 2017 Motion, requesting that any relief be granted to the Fiscal Agent, as the lienholder for the benefit of itself, the movants, and all other Bondowners and Beneficiaries under the Resolution. See ECF No. 89.

7. The 2017 Motion was resolved pursuant to a joint stipulation among ERS and the movants that contemplated, among other things, continuing payments to the Fiscal Agent equal to the contractual amount of interest due and payable on the Bonds for the benefit of all Bondowners. See ECF No. 171.

8. On July 3, 2018, certain holders of beneficial interests in the Bonds filed the 2018 Motion seeking relief from the automatic stay.

9. On July 10, 2018, the Fiscal Agent filed the Limited Response to join in the 2018 Motion, and to request that any relief be granted to the Fiscal Agent, as the lienholder for the benefit of itself, the movants, and all other Bondowners and Beneficiaries under the Resolution.

10. On February 21, 2019, the movants requested that consideration of the 2018 Motion be expedited following a remand from the United States Court of Appeals for the First Circuit. See ECF No. 367. The Court granted the motion, see ECF No. 371, and thereafter entered a scheduling order setting the deadline to file any supplemental brief and declaration in support of the 2018 Motion for June 21, 2019. See ECF No. 505.

SUPPLEMENTAL LIMITED RESPONSE AND JOINDER

11. As a result of the passage of time and for the avoidance of doubt, the Fiscal Agent renews its initial Limited Response to restate that (i) it continues to join in the relief requested by the 2018 Motion, and (ii) to the extent that the Court grants the 2018 Motion, the relief should be granted to the Fiscal Agent, as the holder of liens and security interests, for the benefit of itself, the movants, and all other Bondowners and Beneficiaries, and not solely for the movants.

WHEREFORE, the Fiscal Agent respectfully requests that the Court enter an order granting the Fiscal Agent, for the benefit of itself, the movants, and all other Bondowners and Beneficiaries, relief from the automatic stays imposed in ERS's and the Commonwealth's title III proceedings to exercise any and all rights and remedies that may be available under the Resolution or otherwise at law or in equity, including enforcement of the Fiscal Agent's liens and security interests.

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Dated: June 21, 2019
San Juan, Puerto Rico

Respectfully submitted,

SEPULVADO, MALDONADO & COURET

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